



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Riverwood of Mississippi, Inc.

File: B-280448

Date: September 30, 1998

Robert S. Murphree, Esq., for the protester.
Laurie Ristino, Esq., Forest Service, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that bid for timber sale should have been rejected as nonresponsive for failure to include Certificate of Small Business Status, which contained performance requirements, is denied where bid form obligated bidder to meet identical performance requirements.

DECISION

Riverwood of Mississippi, Inc. protests the award of a contract to Rex, Inc. under an advertisement for a "Compartment 2 Timber Sale," issued by the Forest Service, Department of Agriculture, as a small business set-aside for timber located in the Delta National Forest. Riverwood asserts that the award to Rex was improper because its bid did not include a completed Certificate of Small Business Status.

We deny the protest.

The bid instructions provided that bidders had to complete, and submit with their bids, a Certificate of Small Business Status in order to be eligible for award as a small business. The certificate contained the definition of a small business for purposes of the sale, as well as performance requirements regarding the resale and use of the timber. Rex's high bid was accepted for award despite its failure to include the certificate. Riverwood maintains that Rex's bid instead should have been rejected as nonresponsive, and award made to Riverwood as the only eligible small business bidder.

Responsiveness concerns whether a bid constitutes an offer to perform, without exception, the exact thing called for in the solicitation. Unless something on the face of the bid reduces or modifies the bidder's obligation to perform in accordance with the terms of the solicitation, the bid is responsive. The required commitment to the terms of the solicitation need not be made in the exact manner specified; all that is necessary is that the bid, in some fashion, commit the bidder to the

solicitation's material requirements. Cal-Tex Lumber Co., Inc., B-277705, Sept. 24, 1997, 97-2 CPD ¶ 87 at 3. In this regard, we have recognized that where signing a bid form binds the bidder to all material terms of a required small business status certification, a requirement for a separate commitment to the same terms in the form of an executed certificate is redundant and of no legal consequence; therefore, in such circumstances, the absence of an executed certificate does not render the bid nonresponsive or otherwise provide a basis for rejecting it.¹ Id.

By signing its bid, Rex specifically bound itself to the terms of the sample contract referenced in the bid form. Bid Form at 3. That contract, at clause CT6.9, contains performance requirements identical to those set forth in the certificate. Accordingly, the requirement for submitting the certificate with the bid was redundant, and Rex's failure to submit an executed certificate was of no legal consequence.² Cal-Tex Lumber Co., Inc., supra, at 3.

Riverwood maintains that the sample contract terms are not a substitute for the certificate here since, according to the timber sale prospectus, clause CT6.9 will be included in the sample contract only if the bidder on this sale certifies as a small business by signing the certificate. Prospectus at 9. Riverwood reasons that, since Rex did not sign the certificate, it did not agree to clause CT6.9. We disagree. The prospectus is a document that provides potential bidders who choose to obtain it with more information and details regarding the timber sale than the advertisement announcing the timber sale provides. Its purpose is to allow potential bidders to make an informed decision as to whether to participate in the timber sale. The prospectus is not a part of the contract, however, and does not purport to set forth contract terms. In fact, the prospectus specifically provides that when it contradicts the contract, the contract governs. Prospectus at 2. In contrast, the bid form expressly binds the bidder to the terms of the bid form and the sample contract as material parts of its offer. Bid Form at 3. This being the case, and as neither the bid form nor the sample contract provides any circumstances under which clause CT6.9 will be removed from the sample contract, Rex is bound by the

¹Small business status itself may be established after bid opening, Jimmy's Appliance, B-205611, June 7, 1982, 82-1 CPD ¶ 542 at 4; thus, the only question here is the effect of the absence of the certificate on the performance requirements.

²In supplemental comments Riverwood submitted in response to the agency report, Riverwood asserts that it learned that Rex will not comply with the applicable performance requirements. Whether Rex complies with the performance requirements is a matter of contract administration, which is not subject to review by our Office. 4 C.F.R. § 21.5(a) (1998).

performance requirements contained in the sample contract. It follows that the agency properly accepted Rex's bid.

The protest is denied.

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